



## Appeal of Richard Arlen

The Appellant had entered into a contract with Principal Productions, Inc. in California prior to his departure, but it was his understanding that motion pictures under such contract could be made at his pleasure or not at all, and, in fact, the contract was subsequently cancelled.

The Appellant and his family resided in an apartment in London during their stay in England of about four months. Three months were then spent on location for outdoor scenes in Canada, and one month thereafter was spent in Mexico before the Appellant finally returned to California in November of 1936.

The Appellant's Federal income tax return for the taxable year 1936 was filed on a community property basis, seemingly assuming that California was his residence, but his California personal income tax return, although also filed on the community property basis, stated he was a resident of England.

Section 2(k) of the Personal Income Tax Act prior to amendment defined resident as follows:

"The word 'resident' includes every natural person domiciled in the State of California and every other natural person who maintains a permanent place of abode within this State or spends in the aggregate more than six months of the taxable year within this State. The word 'nonresident' includes every natural person other than a resident."

The Commissioner has provided in his Regulations (Article 2(k)-2, Regulations Relating to the Personal Income Tax Act of 1935):

"Domicil has been defined as the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning. It is the place in which a man has voluntarily fixed the habitation of himself and his family, not for a mere special or temporary purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home."

In order to acquire a domicil of choice there must concur physical presence in the place where domicil is alleged to have been acquired and the intention to make that new place a home. Cal. Pol. Code Sec. 52(7); In re Donovan's Estate, 104 Cal. 623; Sheehan v. Scott, 1145 Cal. 684; Chambers v. Hathaway, 187 Cal. 104.

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Thus, it would seem proper to conclude that the question of whether the Appellant was a resident of California depends not merely on the period of time spent in England, but also on the purpose of his journey, his intentions and the surrounding facts and circumstances.

It is evident that the Appellant did not intend to be a mere visitor, transient, or temporary sojourner in England. His intention at the time of his departure was to pursue his profession and to reside in England for a lengthy, if indefinite, term of years, as evidenced by the purchase of one-way tickets, the order to liquidate his possessions, and the fact that his family accompanied him.

The methods of filing the Federal and State income tax returns were not necessarily inconsistent. As the taxpayer returned and re-established his domicile in California in November of 1936, he was entitled to report his earnings accumulated prior to and subsequent to his residence in England on the community property basis on both his California and Federal income tax returns.

### O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of Richard Arlen to a proposed assessment of additional tax in the amount of \$1,856.08 for the taxable year ended December 31, 1936, be and the same is hereby modified. Said action is hereby reversed insofar as the Commissioner based his proposed assessment of additional tax upon the determination that Richard Arlen was a resident during the period he was outside the State of California; in all other respects said action is hereby sustained. The Commissioner is hereby directed to proceed in conformity with this order and to send to said Richard Arlen a notice of assessment revised in accordance therewith.

Done at Sacramento, California, this 2nd day of December, 1942, by the State Board of Equalization.

R. E. Collins, Chairman  
Wm. G. Bonelli, Member  
George R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary